

### **REMARKS**

In the Office Action of October 13, 2009, the Examiner rejected Claims 18-28 under 35 U.S.C. § 102(e), as being anticipated over U.S. Pat. Pub. No. 2005/0075966 ("Duka"). Applicants respectfully request reconsideration of the rejections of Claims 18-28.

#### **I. § 102 REJECTIONS**

The Examiner rejected Claims 18-28 under 35 U.S.C. § 102(e), as being anticipated by Duka. Duka relates to an electronic trading system with a graphical representation of a financial instrument with financial information analysis tools. Duka, Abstract. The system in Duka allows a market participant to create a condition and adjust positions as part of a transaction. *Id.* at ¶49-50. "A 'simple condition' request (step 3b2) means creating a condition for opening a position at a concrete market quote. More specifically, the market participant can select to open a position if the quote reaches a value specified by the market participant in a simple condition field." *Id.* at ¶51. Accordingly, a participant can establish a position based on the condition. *Id.*

##### **A. Claims 18-24**

Claims 18-24 relate to a system that mitigates the effects of rises or falls in market prices caused by the execution of a conditional order. The system includes a spike control processor that delays the matching of orders when an execution price of the conditional order lies outside of a predefined price threshold and that compares an indicative opening price to the predetermined price threshold. The indicative opening price is adjusted by orders requested while the market is not open. The system further includes an open market processor that opens the market when the indicative opening price lies within the predetermined price threshold. The market is reserved when the indicative opening price lies outside of the predetermined price threshold.

Duka fails to disclose delaying the matching of orders when an execution price of a conditional order lies outside of a predefined price threshold in claims 18-24. Duka discloses that when a condition is satisfied, a transaction is placed. *Id.* at ¶49-51 and Figure 3. "More

specifically, the market participant can select to open a position if the quote reaches a value specified by the market participant in a simple condition field." *Id.* at ¶51. Duka further discloses that "[t]he market participant can also specify a quote shift delay measured in basis points, in a quote shift field 162 (see FIG. 6c), such that the order will be implemented upon the achievement of the previously described condition plus or minus the value of the quote shift." *Id.* at ¶52 and Figure 6c. Duka further states

Upon the setting of the complex condition it is possible to fix a certain distance of the "quote shift" or "time shift" delay for opening or closing a position under a complex condition by entering a value in the quote shift field 162 respectively time shift field 164. By specifying a quote shift delay measured in basis points and which can be positive or negative the position will be opened or closed upon the fulfilment [sic] of the complex condition (for example an intersection of two curves) plus or minus a certain interval in basis points as measured by the quotes value on the vertical axis. Similarly a time delay will mean the execution of a graphical condition plus a distance measured in standard units of measurement of the horizontal axis.

*Id.* at ¶85. The quote shift delay in Duka establishes a price range for satisfying the condition. In particular, Duka opens a position when the quote reaches a specified value: "the position will be opened or closed upon the fulfilment [sic] of the complex condition." *Id.* Conversely, the claims relate to delaying the *matching of orders*, not the opening/closing of a position.

Duka fail to disclose an indicative opening price that is adjusted by orders requested while the market is not open, and that determines whether the market is reserved or opened. In particular, the claims recite that the market is reserved when the indicative opening price is outside the threshold, but the market is opened when the price is within the threshold. As discussed, Duka discloses conditions upon which a position is opened. *Id.* In Duka, there is no disclosure of reserving the market or opening the market, only establishing or opening a position. Duka does not disclose a reserve state of as claimed. In particular, the market is reserved when the indicative opening price lies outside of the predetermined price threshold in the claims. Duka contemplates conditions upon which a position is opened when the condition is satisfied, but such a condition is not in a reserved state as claimed.

**B. Claims 25-26**

Claims 25-26 relate to mitigating the effect of a market spike caused by a conditional order. The matching of orders is delayed when the execution price is outside a predefined range. Further, the matching of orders is delayed until the opening price lies within a second predefined price range or a time period lapses. Duka fails to disclose a matching delay when the execution is outside of a predefined range as discussed above. In particular, Duka discloses opening a *position* upon satisfaction of a condition, such as a market quote. *Id.* at ¶¶ 51-52, 85. Although, the condition is satisfied and the position is opened depending on the market quote, there is no delay for matching orders based on a predefined price threshold as claimed. *Id.* at ¶51.

In addition, Duka fails to disclose a second predefined range by which matches are delayed as claimed. Duka discloses simple conditions and complex conditions, but in neither of the condition states, is there any delay as claimed. *Id.* at ¶52. Duka does not contemplate delaying the matching of orders when the execution price is outside a predefined range, and further that the matches are delayed until the opening price lies within a second predefined price range or a time period lapses as claimed.

**C. Claim 27**

Claim 27 relates to a signal bearing medium for mitigating the effect of a market spike caused by a conditional order. A delay logic delays the matching of orders when the transaction price is outside of a predefined price range. A timing logic uses a time interval to delay order matching until the opening price is within a predefined price range up to a maximum delay time.

Duka fails to disclose a matching delay when the execution is outside of a predefined range as discussed above. Duka also fails to disclose establishing a reserved state for the submitted orders and fails to disclose that the reserved state is removed and the market is opened when the opening price is within a predefined price range as claimed. As discussed above, Duka does not contemplate a reserve state of as claimed. The different conditions in Duka do not establish a reserved state that is then removed and the market opened when the opening price is within a predefined price range as claimed.

**D. Claim 28**

Claim 28 relates to a method for mitigating the effect of a market spike caused by a conditional order. The matching of orders is delayed when the execution price is outside a predefined range. Further, the matching of orders is delayed until the opening price is within a predefined price range up to a maximum delay time. As discussed above, Duka fails to disclose a matching delay when the execution is outside of a predefined range. As further discussed above, Duka also fails to disclose delaying matching until an opening price is within a predefined price range and where the delay is up to a maximum delay time.

**II. CONCLUSION**

Applicants respectfully submit that all of the pending claims are in condition for allowance and seeks early allowance thereof. If for any reason, the Examiner is unable to allow the application but believes that an interview would be helpful to resolve any issues, Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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Date

/Scott A. Timmerman/

Scott A. Timmerman  
Registration No. 55,678  
Attorney for Applicants